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Submitted via FOIAonline

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue
Washington, DC 20460

RE: Freedom of Information Act Request for State Plan Submissions for Areas Designated in Nonattainment for the 2010 Sulfur Dioxide Primary National Ambient Air Quality Standard

Dear FOIA Officer,

Pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, the Environmental Integrity Project (“EIP”) hereby requests the following records held by the U.S. Environmental Protection Agency (“EPA”).

Background

On March 26, 2021, EPA promulgated a final rule establishing final air quality designations for the 2010 Sulfur Dioxide (SO₂) Primary National Ambient Air Quality Standard in accordance with Section 107(d) of the Clean Air Act (“2021 Final Rule”).¹

In relevant part, EPA classified the following counties to (partial) nonattainment status for the 2010 SO₂ primary NAAQS:

State	County
Kentucky	Henderson-Webster County
New York	St. Lawrence County

See 2021 Rule at 16,065 and 16,068.

The Clean Air Act requires states to submit nonattainment plans for areas designated and/or redesignated as nonattainment for the SO₂ NAAQS within 18 months of the date that such nonattainment designation becomes final. 42 U.S.C. § 7514(a). The 2021 Final Rule became effective on April 30, 2021. Consequently, New York and Kentucky were statutorily required to submit nonattainment plans for these counties to EPA by no later than October 31, 2022.

¹ See U.S. EPA, “Final Rule: Air Quality Designations for the 2010 Sulfur Dioxide (SO₂) Primary National Ambient Air Quality Standard—Round 4”. 86 Fed. Reg. 16055 (March 26, 2021). Available at: <https://www.govinfo.gov/content/pkg/FR-2021-03-26/pdf/2021-05397.pdf>

Requesters have searched the websites of EPA, New York, and Kentucky, and have not been able to locate copies of the required submittals from each state.

Requesters have also searched EPA's online "Required State Implementation Plan Elements Dashboard" (or "SPeCS"),² which is a public database that provides information on the status of deadlines and submissions associated with NAAQS requirements applicable to each individual state. While SPeCS confirms that New York and Kentucky were required to submit these plans to EPA by October 31, 2022 (and lists each of the required elements to be submitted), it does not provide a submission date for any of the required elements for either state.

Records Requested

Please provide:

1. Copies of the nonattainment plans, including each of the components/elements required by the Clean Air Act for such plans, submitted by Kentucky (for Henderson-Webster County) and New York (for St. Lawrence County) in response to the April 30, 2021 nonattainment designation.
 - a. If EPA has not received nonattainment plan submissions from either/both states, please state so in your response.
 - b. If EPA has received some, but not all, of the required plan elements from either/both states, please specify which elements EPA has not received in your response.

Claims of Exemption from Disclosure

If you regard any documents as exempt from required disclosure under FOIA, please exercise your discretion to disclose them nevertheless, keeping in mind that FOIA "is the most prominent expression of a profound national commitment to ensuring an open Government" and that "[a]ll agencies should adopt a presumption in favor of disclosure." President Barack Obama, Memorandum for the Heads of Executive Departments and Agencies: Freedom of Information Act, 74 Fed. Reg. 4, 863 (Jan. 26, 2009).

Should you elect to invoke an exemption, please provide the required full or partial denial letter and sufficient information to determine whether or not there may be grounds to appeal EPA's decision. In accordance with the minimum requirements and regulations of due process, this information should include:

- Basic factual material, including the originator, date, length, and addresses of the withheld items.
- Explanations and justifications for denial, including the identification of the exemption applicable to the withheld information or portions of the information found to be subject to exemption, and how each exemption applies to the withheld material.

² Available at: https://edap.epa.gov/public/extensions/S4S_Public_Dashboard_2/S4S_Public_Dashboard_2.html

Additionally, should you elect to invoke an exemption for a record, please provide all reasonably non-exempt portions of such record that are not specifically exempted from disclosure

Waiving Request for Fee Waiver

This FOIA request meets the case-by-case requirements for a fee waiver, by satisfying each of the six factors which must be met to qualify for a fee waiver under EPA regulations found at 40 C.F.R. § 2.107. However, although we are entitled to a fee waiver, we are waiving any request for a waiver of fees.

Opportunity to Provide Clarification

If I can provide any additional information or answer any questions that can help to clarify or limit this request, please do not hesitate to contact me at (202) 263-4441 or via email at SLee@environmentalintegrity.org.

Thank you for your assistance with this request, and I look forward to hearing from you.

Sincerely,

Sanghyun Lee
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